

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.19863 OF 2005

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Dt: 09.09.2005

Between:

Sri B. Abraham Lincoln

.. Petitioner

AND

The Andhra Bank, rep., by its

Chairman-cum-Managing Director

& 3 others.

.. Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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ORDER:

The petitioner was employed as Assistant Manager in Andhra Bank, the 1st respondent herein. While, he was working at Visakhapatnam, he remained absent without leave. Disciplinary proceedings were initiated against him. After making futile efforts to secure his presence and participation in the enquiry, the 3rd

respondent, ultimately, passed an order, dated 18.10.2004, dismissing the petitioner from service. The petitioner challenges the same in this writ petition.

Sri Sivaraju Srinivas, learned counsel for the petitioner, submits that though the enquiry was proceeded in the absence of the petitioner, several remarks are made touching on the merits as though the petitioner participated in it and in that view of the matter, the whole enquiry is vitiated. He submits that the petitioner was incapacitated from attending the office or participating the enquiry on account of reasons beyond his control and the appeal provided for under the service rules itself is time barred. He contends that on account of the patent defects in the impugned order, the same may be set aside and that the petitioner be provided with an opportunity, to participate in the proceedings.

Sri Nooty Ram Mohan Rao, learned Standing Counsel for the respondents, on the other hand, submits that on account of the persistent absence of the petitioner, the respondents were left with no alternative, except to proceed ex-parte and it is not open to the petitioner to challenge the impugned order in this writ petition without exhausting the remedy of appeal.

It is not in dispute that the service regulations provide for an appeal against the order of dismissal. Though an endeavour is made on behalf of the petitioner to point out the defects in the impugned order, this Court is not inclined to advert to the same at this stage. The appellate authority would be better suited to appreciate the various developments that have taken place in the disciplinary proceedings. It may be true that the appeal is time barred as of now. However, in the context of the submissions made on behalf of the petitioner that the impugned order was received by the petitioner only in the recent past, and that he was incapacitated from attending the enquiry, he can submit an application before the appellate authority for condonation of delay, duly explaining the reasons. Inasmuch as, the delay is not enormous to constitute a ground to reject the appeal, on the threshold, the petitioner can prefer an appeal with an application to condone delay. There is no reason to believe that the appellate authority would not consider the application for condonation of delay objectively.

Hence, the writ petition is disposed of leaving it open to the petitioner to avail the remedy of appeal against the order, dated 18.10.2004, duly filing an application for condonation of delay. The appellate authority in turn shall examine the application for condonation of delay in proper prospective and pass appropriate orders. No order as to costs.

09.09.2005

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